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# Questions and Answers on Report Cards and Transcripts For Students with Disabilities Attending Public Elementary and Secondary Schools

[OCR-00050]

## OFFICE OF THE ASSISTANT SECRETARY

The Office for Civil Rights in the United States Department of Education issues this guidance to provide state and local education agencies with information concerning disclosure of disability on report cards and transcripts for students with disabilities attending public elementary and secondary schools, under Section 504 of the *Rehabilitation Act of 1973* (29 U.S.C. § 794) and its implementing regulation (34 C.F.R. Part 104) and Title II of the *Americans with Disabilities Act of 1990* (42 U.S.C. § 12131 *et seq.*) and its implementing regulation (28 C.F.R. Part 35). As appropriate, this document also discusses two other relevant federal laws, the *Individuals with Disabilities Education Act of 2004* (20 U.S.C. § 1400 et seq.) and its implementing regulation (34 C.F.R. Part 300) and the *Family Educational Rights and Privacy Act* (20 U.S.C. §1232g) and its implementing regulation (34 C.F.R. Part 99).

This guidance represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations

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## Relevant Federal Laws

**1. What federal laws can help address questions about what information about disability may appear on report cards and transcripts for students with disabilities attending public elementary and secondary schools?**

**Section 504 and Title II -** Section 504 of the *Rehabilitation Act of 1973* (Section 504) prohibits discrimination on the basis of disability in programs or activities receiving Federal financial assistance. Title II of the *Americans With Disabilities Act of 1990* (Title II) prohibits discrimination on the basis of disability by public entities, including public elementary and secondary school systems, regardless of receipt of Federal financial assistance. The Office for Civil Rights (OCR) in the United States Department of Education (Department) has enforcement responsibilities under both of these laws. As part of their disability nondiscrimination mandates, Section 504 and Title II require local education agencies (LEAs) to provide a free appropriate public education (FAPE) to qualified individuals with disabilities in their jurisdiction. See 34 C.F.R. § 104.33 and 28 C.F.R. § 35.103(a).

Section 504 and Title II do not have specific provisions addressing report cards or transcripts. The regulations implementing Section 504 and Title II make clear that in general, Section 504 and Title II prohibit recipients and public entities from treating persons differently on the basis of disability in the provision of aid, benefits, or services. However, recipients and public entities may provide a different aid, benefit, or se to persons with disabilities where necessary to provide an aid, benefit, or service th as

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effective as that provided to others. See 34 C.F.R. § 104.4(b)(1)(i)-(iv) and 28 C.F.R. § 35.130(b)(1)(i)-(iv). Among the aid, benefits, and services provided to students and parents are report cards and transcripts. Section 504 and Title II do not contain specific confidentiality requirements, but do prohibit different treatment on the basis of disability. This generally would prohibit unnecessary disclosures of disability status to third parties.

Other federal laws are also relevant.

***IDEA*** – Through the Office of Special Education and Rehabilitative Services (OSERS), the Department of Education administers the *Individuals with Disabilities Education Act* (*IDEA*), which provides funds to states to assist in making a free appropriate public education (FAPE) available to eligible children with disabilities. *IDEA* requirements apply to state education agencies (SEAs), school districts, and other public agencies that serve *IDEA*-eligible children.

*IDEA* does not have specific provisions on student report cards or transcripts, but does require that the individualized education program (IEP) for a child with a disability include a description of how the child's progress toward meeting the annual goals set forth in his or her IEP will be measured and when periodic reports on the child's progress toward meeting the annual goals will be provided (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards). 20 U.S.C. § 1414(d)(1)(A)(i)(III); 34 C.F.R. § 300.320(a)(3). These periodic progress reports may be separate from, or included as part of, the regular report cards of students with disabilities with an IEP. In general, the nondiscrimination principles of Section 504 and Title II would apply to report cards with or without such progress reports.

***FERPA*** - The Department's Family Policy Compliance Office implements and enforces the *Family Educational Rights and Privacy Act* (*FERPA*). *FERPA* protects the privacy interests of parents and students with regard to education records, and generally prohibits a policy or practice of disclosing personally identifiable information from education records without consent unless it is subject to a specific exception.

Disclosures of personally identifiable student information, including disability status, are subject to the protections of *FERPA* and *IDEA*. Generally, these statutes require

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consent prior to disclosures of personally identifiable information contained in education records unless a specific exception applies. See 34 C.F.R. §§ 99.30 - 99.31 of the *FERPA* regulations and 34 C.F.R. § 300.622 of the *IDEA* regulations. Both student report cards and student transcripts are considered "education records" under *FERPA* and *IDEA*.

While the primary focus of the following questions and answers are the requirements under Section 504 and Title II of the ADA, to the extent that IDEA applies, this law is briefly discussed as well.

## Report Cards

**2. May a report card for a student with a disability identify special education or other related services or resources being provided for that student or otherwise indicate that the student has a disability? For instance, may the report card refer to an IEP or a plan providing for services under Section 504?**

Yes. Report cards are provided to parents to indicate their child's progress or level of achievement in specific classes, course content, or curriculum. Consistent with this purpose, it would be permissible under Section 504 and Title II for a report card to indicate that a student is receiving special education or related services, as long as the report card informs parents about their child's progress or level of achievement in specific classes, course content, or curriculum. For instance, a report card for a student with a disability may refer to an IEP or a plan for providing services under Section 504 in order to report on the student's progress on the specific goals in the IEP or plan developed under Section 504.

However, the mere designation that a student has an IEP or is receiving a related service, without any meaningful explanation of the student's progress, such as a grade or other evaluative standard established by an LEA and/or SEA, would be inconsistent with *IDEA's* periodic reporting requirements, as well as with Section 504 and Title II. Under Section 504 and Title II, in general, the LEA must provide students with disabilities report cards that are as informative and effective as the report cards provided for students without disabilities. See 34 C.F.R. § 104.4(b)(1)(i)-(iv) and 28

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C.F.R. § 35.130(b)(1)(i)-(iv). Without more meaningful information, a report card that indicates only special education status provides the student with a disability with a benefit or service that is different from and not as informative and effective as the benefit or service that is provided through the report card for students without disabilities.

### 3. May a report card for a student with a disability distinguish between special education programs and services and general education curriculum classes through specific notations or the use of asterisks or other symbols?

In general, yes. LEAs frequently distinguish between general education curriculum classes and other types of programs and classes, such as advanced placement, honors, or remedial classes. Making similar distinctions on report cards would be consistent with the general requirements of Section 504 and Title II that individuals with disabilities may not unnecessarily be treated differently than individuals without disabilities.

See 34 C.F.R. § 104.4(b)(1)(i)-(iv) and 28 C.F.R. § 35.130(b)(1)(i)-(iv). Under Section 504 and Title II, in order to properly reflect the progress of a student with a disability in a modified or alternate education curriculum, an LEA may distinguish between special education programs and
services provided under a modified or alternate education curriculum and regular education classes under the general education curriculum on the student's report card. For instance, where a student's IEP calls for a modified tenth grade literature curriculum to be provided through the special education program, it would be appropriate for the report card to indicate that the student's progress was measured based on the modified education curriculum. This distinction also may be achieved by using an asterisk or other symbol meant to reference the modified or alternate education curriculum as long as the statements on the report card, including the asterisks, symbols or other coding, provide an explanation of the student's progress that is as informative and effective as the explanation provided for students with
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## 4. May special notations, including asterisks or other symbols, appear on a report card for a student with a disability who received accommodations in general education curriculum classes?

Yes. Accommodations are generally understood to include aids or adjustments that are part of an IEP or plan developed under Section 504 and that enable the student with a disability to learn and demonstrate what the student knows. In general, accommodations do not affect course content or curriculum. Examples may include sign language interpreters in the classroom, the provision of materials in alternate formats, or extra time on tests. Accordingly, to the extent that the use of notations, asterisks, symbols, or other coding on a report card to indicate that a student with a disability received accommodations is part of the information given to parents about their child's progress or level of achievement in specific classes, course content, curriculum, the IEP, or the plan under Section 504, it is permissible under Section 504 and Title II.

## 5. May a report card for a student with a disability simply refer to another document that more fully describes the student's progress?

Yes. Nothing in Section 504 or Title II requires that LEAs use any particular format or method to provide information to parents about their child's progress or level of achievement in specific classes, course content, curriculum, IEP, or plan under Section 504. As explained above, under Section 504 and Title II, the LEA must provide students with disabilities report cards that are as informative and effective as the report cards provided to students without disabilities. As noted above, there are also IDEA-specific provisions that require periodic reporting.

## 6. May report card grades for a student with a disability be based on grade level standards?

Yes. Assigning grades (i.e., achievement or "letter" grades) for a child with a dis based on the student's grade level (i.e., year-in-school) standards would not be

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inconsistent with Section 504 or Title II. Generally, Section 504 and Title II would require that students with and without disabilities in the same regular education classes in the general education curriculum be graded using the same standards. That is, if an LEA assigns grades to nondisabled students participating in regular education classes using grade level standards to reflect progress in the general education curriculum, then the LEA would also use those standards to assign grades to students with disabilities in those same classes. See 34 C.F.R. § 104.4(b)(1)(i)-(iv) and 28 C.F.R. § 35.130(b)(1)(i)-(iv). Nothing in Section 504 or Title II prohibits SEAs and LEAs from deciding how to establish standards to reflect the progress or level of achievement of students with disabilities who are taught using different course content or a modified or alternate education curriculum. To the extent that a student with a disability is not participating in regular education classes, but is receiving modified course content or is being taught under a modified or alternate curriculum, it would be up to the SEA and/or the LEA to determine the standards to be used to measure the student's progress or level of achievement.

## Transcripts

### 7. May a transcript for a student with a disability indicate that the student has a disability, has been enrolled in a special education program, or has received special education or related services?

No. A student's transcript generally is intended to inform postsecondary institutions or prospective employers of a student's academic credentials and achievements. Information that a student has a disability, or has received special education or related services due to having a disability, does not constitute information about the student's academic credentials and achievements. Under Section 504 and Title II, recipients and public entities may not provide different or separate aid, benefits, or services to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide those individuals with aid, benefits, or services that are as effective as those provided to others. See 34 C.F.R. § 104.4(b)(1)(i)-(iv) and 28 C.F.R. § 35.130(b)(1)(i)-(iv). Notations that are used exclusively to identify a student as having a disability or identify education programs for students with disabilities unnece provide these students with different educational benefits or services. Identifyi

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programs as being only for students with disabilities also would be viewed as disclosure of disability status of enrollees and constitutes different treatment on the basis of disability. Therefore, it would be a violation of Section 504 and Title II for a student's transcript to indicate that a student has received special education or a related service or that the student has a disability.

In addition, prohibiting such preadmission and preemployment disclosures is consistent with the Section 504 regulatory requirements that, in general, postsecondary institutions may not make preadmission inquiries as to whether an applicant for admission has a disability prior to admission, 34 C.F.R. § 104.42(b)(4), nor may employers conduct preemployment medical examinations or make preemployment inquiries as to whether an applicant for employment has a disability prior to an offer of employment, 34 C.F.R. § 104.14.

## 8. May a transcript for a student with a disability indicate, either through specific notations or the use of asterisks or other symbols, that the student took classes with a modified or alternate education curriculum?

In general, yes. While a transcript may not disclose that a student has a disability or has received special education or related services due to having a disability, a transcript may indicate that a student took classes with a modified or alternate education curriculum. This is consistent with the transcript's purpose of informing postsecondary institutions and prospective employers of a student's academic credentials and achievements. Transcript notations concerning enrollment in different classes, course content, or curriculum by students with disabilities would be consistent with similar transcript designations for classes such as advanced placement, honors, and basic and remedial instruction, which are provided for both students with and without disabilities, and thus would not violate Section 504 or Title II. This distinction may also be achieved by using an asterisk or other symbol meant to reference the modified or alternate education curriculum. These notations, asterisks, or other symbols indicating a modified or alternate education curriculum are permissible when they do not specifically disclose that a student has a disability, are not used for the purpose

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identifying programs for students with disabilities, and are consistent with the purpose of a student transcript.

### 9. May special notations, including asterisks or other symbols, appear on a transcript for a student with a disability who received accommodations in general education curriculum classes?

In general, no. Because the use of accommodations generally does not reflect a student's academic credentials and achievement, but does identify the student as having a disability, it would be a violation of Section 504 and Title II for a student's transcript to indicate that the student received accommodations in any classes. For example, a notation indicating the use of Braille materials is not related to whether that student mastered all the tenth grade objectives for her literature class. The only purpose of such a notation is to identify that student as having a visual impairment. Because accommodations are generally understood to include aids and adjustments to enable a student with a disability to learn and demonstrate knowledge, this notation could identify the student as having a disability and therefore constitute different treatment on the basis of disability.

### 10. May a transcript for a student with a disability indicate that a student received a certificate of attendance or similar document rather than a regular diploma?

A transcript for a student with a disability may indicate receipt of a certificate of attendance or a similar document, rather than a regular diploma, under certain circumstances. These circumstances are where this does not disclose that a student has received special education or related services, does not otherwise specifically disclose that a student has a disability (for example, because certificates of attendance are available to both students with disabilities and students without disabilities), is not used for the purpose of identifying programs for students with disabilities, and is consistent with the purpose of a student transcript -- to inform postsecondary

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institutions and prospective employers of a student's academic credentials and achievements.

**Office for Civil Rights (OCR)**

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